

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

# SKELTON COMMUNICATION, INC.'S COMPLAINT ON MILLER ACT PAYMENT BOND

## JURISDICTION AND VENUE

2. Venue is proper in the United States District Court for the Northern District of California, as provided by Title 40, U.S.C. §3133(b)(3) since the federal construction project which is the subject of this dispute is located within the Court's geographic jurisdiction.

SKELTON COMMUNICATIONS, INC.'s Complaint

## THE PARTIES

3. Use-Plaintiff SKELTON COMMUNICATIONS, INC. (hereinafter “SKELTON”) is, and at all times herein mentioned was, a California corporation duly organized and existing under the laws of the State of California, with its principal place of business located within the City of Paso Robles, County of San Luis Obispo, State of California doing business as a subcontractor on federal works of improvement.

4. Use-Plaintiff SKELTON is informed and believes, and thereupon alleges that Defendant LIBERTY MUTUAL INSURANCE COMPANY (hereinafter “LIBERTY MUTUAL”) is, and at all times herein mentioned was, a Massachusetts corporation duly organized and existing under the laws of the State of Massachusetts, with its principal place of business located within the City of Boston, State of Massachusetts, doing business on federal construction bonds within the County of Alameda, State of California.

5. Use-Plaintiff SKELTON is informed and believes, and thereupon alleges that Defendant FEDERAL INSURANCE COMPANY (hereinafter "FEDERAL") is, and at all times herein mentioned was, a New Jersey corporation duly organized and existing under the laws of the State of New Jersey, with its principal place of business located within the City of Whitehouse Station, State of New Jersey, doing business on federal construction bonds within the County of Alameda, State of California.

6. The true names and capacities whether individual, corporate, associate or otherwise of Defendants named herein as DOES 1 through 5, inclusive, are unknown to Use-Plaintiff who is informed and believes, and thereon alleges, that each of said fictitiously named Defendants are liable to Use-Plaintiff on the causes of action herein alleged, and therefore, Use-Plaintiff sues said Defendants by said fictitious names. Use-Plaintiff will move to amend this Complaint to show the true names and capacities of said fictitiously named Defendants when the same have been ascertained.

### III.

## GENERAL ALLEGATIONS

7. Use-Plaintiff SKELTON is informed and believes, and thereon alleges, that on or



1 about September 30, 2013, Kirlin Builders, LLC previously known as John J. Kirlin Special  
 2 Projects, LLC (hereinafter "Kirlin Builders") was awarded a prime contract by the United States  
 3 of America, acting by and through the United States Department of the Army (hereinafter the  
 4 "Army") designated Contract No. W912DY-8--D-0034-CY03 in the amount of \$9,168,081.00  
 5 associated with a federal work of improvement commonly known as the "Design and Renovate  
 6 Building 332 Dining Facility" project located at the Army Parks Reserve Training Area  
 7 (hereinafter the "Dining Facility Project") located in Dublin California (hereinafter "Camp  
 8 Parks"). The Contract for the Dining Facility Project required Kirlin Builders to design and  
 9 renovate an existing dining facility located at Camp Park, California, and included installation  
 10 of interior and exterior communication systems.

11 8. Pursuant to the requirements of 40 U.S.C. §3133, *The Miller Act*, Kirlin  
 12 Builders, as principal, on one hand, and LIBERTY MUTUAL, FEDERAL and DOES 1 and 2,  
 13 on the other hand, as surety, (hereinafter collectively "LIBERTY MUTUAL/FEDERAL")  
 14 executed and delivered to the Army a Payment Bond pursuant to 40 U.S.C. §3131 and §3133  
 15 [*The Miller Act*] whereby LIBERTY MUTUAL/FEDERAL guaranteed the payment to all  
 16 entities supplying labor, services and material in the prosecution of the work provided for in the  
 17 Contract for the Dining Facility Project and all duly requested and/or authorized modifications  
 18 thereto.

### 19 FIRST CAUSE OF ACTION

20 (Action Upon Miller Act Payment Bond Associated with  
 21 Outside Plant Work Agreement as against LIBERTY MUTUAL/FEDERAL)

22 9. Use-Plaintiff SKELTON incorporates herein by reference paragraphs 1 through  
 23 paragraph 8 hereinabove as through the same were set forth in full herein.

24 10. Use-Plaintiff SKELTON is informed and believes, and thereon alleges, that on or  
 25 about May 11, 2016, Kirlin Builders entered into an agreement with Use-Plaintiff SKELTON in  
 26 which SKELTON agreed to perform the Outside Plant Communication System Work for the  
 27 sum of \$44,566.56 (hereinafter the "Outside Plant Work Agreement"). The Outside Plant Work  
 28 Agreement required Kirlin Builders, *among other things*, to make timely payment to Use-

1 Plaintiff SKELTON for the work performed.

2       11.       Use-Plaintiff SKELTON is further informed and believes, and thereon alleges,  
3 that Kirlin Builders has not paid Use-Plaintiff SKELTON any funds associated with the Outside  
4 Plant work which it performed, and therefore for almost a year now Kirlin Builders had owed  
5 Use-Plaintiff the unpaid subcontract balance of \$44,566.00.

6       12.       Use-Plaintiff SKELTON is informed and believes, and thereon alleges, that it  
7 has performed all obligations and satisfied all conditions for which it was responsible under the  
8 Outside Plant Work Agreement, except for those obligations or duties which have been excused  
9 or otherwise discharged or prevented by virtue of Kirlin Builders' conduct, breach of contract or  
10 by operation of law. Use-Plaintiff is informed and believes, and thereon alleges, that it last  
11 performed outside plant work on the Dining Facility Project on or after July 31, 2016.

12       13.       Use-Plaintiff SKELTON is informed and believes, and thereon alleges, that  
13 Defendant Kirlin Builders has refused and failed to pay Use-Plaintiff SKELTON for the work  
14 performed under the Outside Plant Work Agreement, and more than 90 days has now elapsed  
15 since these funds were due and owing to Use-Plaintiff SKELTON. Use-Plaintiff SKELTON is  
16 further informed and believes, and thereon alleges, that this action has been commenced in the  
17 proper court within one year of the date that Use-Plaintiff last performed work on the Dining  
18 Facility Project.

19       14.       As a result of Kirlin Builders' failure to pay Use-Plaintiff SKELTON the sums  
20 due, there is now due and owing from LIBERTY MUTUAL/FEDERAL to Use-Plaintiff  
21 SKELTON the principal sum of Forty-Four Thousand, Five Hundred Sixty-Six Dollars and  
22 Fifty-Six Cents (\$44,566.56).

23       15.       Use-Plaintiff SKELTON is informed and believes, and thereon alleges, that it  
24 either timely provided written claim notice to Defendant LIBERTY MUTUAL/FEDERAL in  
25 accordance with 40 U.S.C. §3131 and §3133, or in the alternative, as a first-tier subcontractor to  
26 Kirlin Builders that it was excused from providing said bond claim notice.

27       16.       Use-Plaintiff SKELTON has been compelled to engage the law firm of Braun &  
28 Melucci, LLP to enforce its bond rights and to prosecute the instant action. Pursuant to the

1 terms of said bond, Use-Plaintiff SKELTON is entitled to compensation for its attorneys' fees  
2 and expenses in the prosecution of this action.

3 WHEREFORE, Use-Plaintiff SKELTON COMMUNICATIONS, INC. prays judgment  
4 against Defendant LIBERTY MUTUAL INSURANCE COMPANY, Defendant FEDERAL  
5 INSURANCE COMPANY, and DOES 1 through 5, inclusive as follows:

6 **FIRST CAUSE OF ACTION**

7 A. For damages in the sum of Forty-Four Thousand, Five Hundred Sixty-Six  
8 Dollars and Fifty-Six Cents (\$44,566.56) under the Outside Plant Work Agreement,

9 B. For interest therein at the legal rate from a date according to proof at trial;

10 C. For costs of suit incurred herein;

11 D. For reasonable attorneys' fees incurred herein; and

12 E. For such other and further relief as the Court may deem just and proper.

13 Dated: July 26, 2017

**BRAUN & MELUCCI, LLP**

14  
15 By: /s/ William J. Braun  
16 William J. Braun, Esq.  
17 Attorneys for Use-Plaintiff  
SKELTON COMMUNICATIONS, INC.  
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